IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

JUDGMENT

S.B.CIVIL WRIT PETITION NO.2488 OF 2000.
Shrimati Pushpa Sharma
VERSUS
Life Insurance Corporation of India & Others.

Date of Judgement. : August 22, 2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Vinodi Lal Mathur, for the petitioner.
Mr.B.L.Agarwal, for the respondents.

BY THE COURT :

1. In this writ petition, the petitioner has sought a direction to the respondents for realizing the payment in respect of the Insurance Policy No.192158763 taken by the deceased husband of the petitioner Smt.Jugal Kishore while ensuring his life for Rs.50,000/- while in service of the Electricity Board.

2. The details of the facts need not be gone into. Suffice it to say that while the husband of the petitioner was in service of the State Electricity Board, a Scheme having been brought into force by the respondent Life Insurance Corporation of India for the employees serving in various organizations to insure their lives and the premium was to be collected by the employer and was to be directly paid

to the Life Insurance Corporation of India. It is submitted that the deceased husband of the petitioner, Shri Jugal Kishore, took the aforesaid Policy No.192158763 for an amount of Rs.50,000/- w.e.f. 28.07.1995 with certain benefits, as mentioned in para 3 of the writ petition and for which a monthly premium of Rs.280/- was deducted from the salary of the deceased by the employer, State Electricity Board and paid to the insurer, respondent-Life Insurance Corporation of India. It is submitted that along with the aforesaid Policy No.192158763 for Rs.50,000/-, the deceased had also taken another Policy No.25856190 under the “Vetan Bachat Yojna” for which a separate premium of Rs.35/- was also being deducted by the employer and paid directly to the respondent-Life Insurance Corporation of India.

3. There is no dispute that till September, 1996, the premium was regularly deducted and sent by the employer to the Life Insurance Corporation of India. It is submitted that in September, 1996, the deceased Jugal Kishore suffered from 'Dengue' fever and ultimately died on 28.12.1996. During this period on account of illness, the deceased could not attend his duties and did not receive his salary.

4. After the death of the husband of the petitioner, the nominee Shri Suraj Narayan, father of the deceased, in Policy No.25856190 (not the Policy in question) submitted the claim to the respondent-Life Insurance Corporation of India and the respondent after completing the necessary formalities paid a sum of Rs.20,419/- vide cheque

No.750841 dated 06.06.1997. However, when the petitioner, the widow of the deceased who was nominee in Policy No.192158763 (Policy in question) submitted the claim, she was informed that the Policy is being serviced by the Divisional Office at Ajmer of the respondent-Life Insurance Corporation of India and that all correspondences may be done with the Divisional Office at Ajmer. It is submitted by the learned counsel for the petitioner that the petitioner was ultimately informed by the respondent No.5 vide letter dated 17.02.1999 after two years, that the premium for the months of October, 1996 to December, 1996, amounting to Rs.840/- had not been paid and was only sent by the employer on 18.02.1997 and as such the policy had lapsed. The said amount which had been sent by the employer had been refunded by the respondents to the employer-State Electricity Board vide their letter dated 17.02.1999. Thereafter, the petitioner made several attempts to satisfy the respondents regarding the genuineness of her claim and that it was only on account of the fact that her husband, the deceased, insured, had fallen ill as a result of the illness, his leave application had not been processed and accordingly the employer had not sanctioned the leave, the deduction from the pay was not made and the premium not remitted to the respondent-Corporation during the period of October, November and December, 1996 but none the less the employer had sent the amount after processing the leave applications, which was not accepted by the respondent-Life Insurance Corporation of India and the refund made to the employer on 17.02.1999.

5. Learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of Delhi Electric Supply Undertaking Vs. Basanti Devi and Another reported in (1999) 8 SCC 229 dealing with similar circumstance where nominee of the insured under the Salary Saving Scheme of Life Insurance Corporation of India had died and the employer had failed to pay the premium after deducting it from the salary to the Life Insurance Corporation of India. The Life Insurance Corporation of India took the stand that the Policy had lapsed which ultimately led to the nominees to file a complaint under Section 18 of the Consumer Protection Act, 1986 before the State Commission which by its judgment dated 10.11.1993 directed the Delhi Electricity Supply Undertaking (hereinafter referred to as “D.E.S.U.”) to pay the amount of Rs.50,000/- with interest @ 15% but absolved the Life Insurance Corporation of India of the liability. In the appeal filed by the D.E.S.U., their Lordships of the Hon'ble Supreme Court allowed the appeal and directed the Life Insurance Corporation of India which is the respondent-herein to pay to the nominees the insurance amount of Rs.50,000/- with interest @ 15% till the payment.

6. Learned counsel for the respondent-Life Insurance Corporation of India, on the other hand, submitted that on account of failure of employer to deduct and remit the amount of premium, the Policy was rightly treated as having lapsed by the respondent-Life Insurance Corporation of India was not liable to pay the amount as the Policy had lapsed due to non-payment of the premium by the employer.

7. I have given my thoughtful consideration to the rival submissions and have gone through the record of the case as well as the judgment of the Hon'ble Supreme Court in the case of D.E.S.U. Vs. Basanti Devi (supra).

8. I am of the view that the facts and circumstances of the present case are squarely covered with the facts and circumstances of the case of D.E.S.U. Vs. Basanti Devi decided by their Lordships of the Hon'ble Supreme Court. Their Lordships after having taken into consideration the entire Scheme of the Policy held that the employer has been assigned the role of collecting premium and remitting the same to the Life Insurance Corporation of India. So far as the employee is concerned, the employer shall be treated as the agent of the Life Insurance Corporation of India. So far as the employee is concerned, their Lordships held that no obligation was cast on him to pay the premium directly to the Life Insurance Corporation of India. The relevant portion of the judgment may be extracted in this behalf:-

> "11.In the present case we are not concerned with the insurance agent. It is not the case of Life Insurance Corporation of India that DESU could not be permitted as an insurance agent within the meaning of the Insurance Act and the regulations. DESU is not procuring or soliciting any business for Life Insurance Corporation of India. DESU is certainly not an insurance agent within the meaning of the aforesaid Insurance Act and the regulations but DESU is certainly an agent as defined in Section 182 of the Contract Act. The mode of collection of premium has been indicated in the Scheme itself and the employer has been assigned the role of collecting

premium and remitting the same to LIC. As far as the employee as such is concerned, the employer will be an agent of LIC. It is a matter of common knowledge that insurance companies employ agents. When there is no insurance agent as defined in the regulations and the Insurance Act, the general principles of the law of agency as contained in the Contract Act are to be applied.

12. Agent in Section 182 means a person employed to do any act for another, or to represent another in dealings with third persons and the person for whom such act is done, or who is so represented, is called the principal. Under Section 185 no consideration is necessary to create an agency. As far as Bhim Singh is concerned, there was no obligation cast on him to pay premium direct to LIC. Under the agreement between LIC and DESU, premium was payable to DESU who was to deduct every month from the salary of Bhim Singh and to transmit the same to LIC. DESU had, therefore, implied authority to collect premium from Bhim Singh on behalf of LIC. There was thus, valid payment of premium by Bhim Singh. The authority of DESU to collect premium on behalf of LIC is implied. In any case, DESU had ostensible authority to collect premium from Bhim Singh on behalf of LIC. So far as Bhim Singh is concerned DESU was an agent of LIC to collect premium on its behalf."

9. Earlier their Lordships of the Hon'ble Supreme Court in the judgment at para 6 have held that in case where the premium is not received by the Life Insurance Corporation of India, then it is for the Life Insurance Corporation of India to intimate the employee whose life has been insured that the premium has not been received by it.

10. In the instant case, there is no material to show that at any point of time, the respondent-Life Insurance Corporation of India informed the deceased who was insured that the premium had not been received from the employer,

as such, the lapse in the light of the judgment of the Hon'ble Supreme Court in the case of D.E.S.U. Vs. Basanti Devi (supra) was on the part of the Life Insurance Corporation of India in not intimating the deceased employee-insured that the employer had failed to remit the premium to the Life Insurance Corporation of India, the insurer. In view of the above stand taken by the Life Insurance Corporation of India that the Policy had lapsed on account of non-remittance of the premium by the employer cannot be accepted. The petitioner would be entitled to the amount under the Insurance Policy No.192158763 dated 28.07.1995 with interest at the rate which has been as awarded by their Lordships of the Hon'ble Supreme Court i.e. 15% per annum w.e.f. the date when the application was submitted by the petitioner i.e. 18.01.1997 upto the date of payment. The payment be made to the petitioner by the respondents within three months.

11. In view of the above, this writ petition is allowed, as aforesaid.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.